

LOEAK
v.
BULELE, and others
Civil Appeal No. 41
Appellate Division of the High Court
Marshall Islands District
February 2, 1977

Dispute over distribution of condemnation award. The Appellate Division of the High Court, Hefner, Associate Justice, held that *Iroi*j should receive 6 percent, and *alab* and *dri jerb*al interests 94 percent.

1. Appeal and Error—Findings and Conclusions—Supporting Evidence

Where the evidence produced at the trial supported trial court's decisions, findings would not be disturbed on appeal.

2. Eminent Domain—Compensation—Purpose and Nature

The award in a condemnation proceeding is to give just compensation to the landowner and in effect replace the land rights taken with money.

3. Marshalls Land Law—Interests Taken by Government—Distribution of Compensation

Where, under Marshallese custom, the *Iroi*j received 6 percent of copra proceeds and the *alab* and *dri jerb*al interests received 94 percent, upon condemnation of land it was proper for lower court to distribute the condemnation award according to that formula.

HEFNER, *Associate Justice*, BROWN, *Associate Justice*,
and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

This matter involves the distribution of monies received from an award for the condemnation of two *watos* on Ennylabegon Island, Kwajalein Atoll, Marshall Islands. The appellant is the *Iroi*j for the land and the appellee is the representative for the *alabs* and *dri jerbals* for said *watos*.

At the time of the trial, the total award, including interest, was \$16,715.68 (sixteen thousand seven hundred fifteen dollars and sixty-eight cents). There were two

major factual disputes during the trial. The first was the contention by the appellant that a meeting was held and an agreement reached for the distribution of the money. The appellee denies there was any meeting or agreement. The second dispute was the claim of the appellant that he had paid the appellee a payment of \$8,850.00 (eight thousand eight hundred and fifty dollars). The appellee admits he received a payment of only \$6,850.00 (six thousand eight hundred and fifty dollars). Both of these issues were resolved in favor of the appellee and against the appellant by the trial court.

[1] The evidence produced at the trial supports the trial court's decision in both cases. The findings will not be disturbed on appeal. *Henos v. Kaiko*, 5 T.T.R. 352 (App. Div. 1971).

The appellant maintained at the trial that the proper distribution of the condemnation is one-third to the *Iroi*, one-third to the *alab* and one-third to the *dri jermal*. In the notice of appeal, it is asserted a later meeting was held where it was decided that one-fourth would go to the *Iroi*, one-fourth to the *alab*, one-fourth to the *dri jermal* and the remaining one-fourth in a bank account "for all parties concerned".

The appellee maintains that the division of the money should be on the same basis as the division of copra proceeds. The trial court found that this was the proper distribution and awarded six (6%) per cent to the *Iroi* and ninety-four (94%) per cent for the *alab* and *dri jermal* interests.

The reasoning of the trial court was that according to Marshallese custom, the *dri jermals* who live on the land receive the largest share. The *alab*, who is the one in immediate charge of the land, receives the next largest share. Together, the *alab* and *dri jermal* receive ninety-four (94%) per cent of the copra proceeds. This leaves six

(6%) per cent for the *Iroi*. The *Iroi* is also entitled to ceremonial gifts and has a possible future interest in the land should the *alab* die without successors or if he evicts the *alab* and *dri jermal* for not performing their customary obligations. The trial court did not give any value to the future interest or to the ceremonial gifts.

According to the testimony at the trial, it is well established by custom that the copra proceeds were divided so that the *Irois* received equivalent to six (6%) per cent. The balance was divided between the *alab* and *dri jermal*. The defendant had no formula or precedent to base his proposal of one-third for the *Iroi*. Indeed, the foreign concept of condemnation produces a situation new to the Marshallese land tenure system.

In this case, there were approximately one hundred people dispossessed because of the condemnation. It is clear that the ones most vitally affected were the *dri jermals* and *alabs* since they are the ones who not only derive their livelihood from the land but the condemnation resulted in their having to find other land and dwelling places to live. The *Iroi* did not live on the land nor was he solely dependent on the copra proceeds from the land condemned. As an *Iroi*, he shares in the copra proceeds from many other *watos*.

It is difficult to imagine a more significant event concerning the land than total dispossession of all the people living and working on it. The importance of possession of land in the Marshall Islands is evident. *Land Tenure Patterns*, p. 2 (Tobin). The feudal system involves the *Iroi*, *alab* and *dri jermal* and each has a corresponding duty to the other. *Jatios v. Levi*, 1 T.T.R. 578 (App. Div. 1954). With the condemnation, the entire land tenure system for the *watos* is disturbed for at least the indefinite term that the condemnor uses the land.

[2] The award in a condemnation proceeding is to give

just compensation to the land owner and in effect replace the land rights taken with money.

[3] To accept the defendant's proposal of the division of the award would substantially increase the value of his rights and correspondingly decrease the plaintiff's. Since the land rights and interests of the parties are directly connected to the production from the land in the form of copra proceeds, the formula arrived at by the trial court is reasonable and just.

As pointed out in the judgment, the interest of the *alab* and *dri jermal* is at least worth ninety-four (94%) per cent. Not only is that their share of the copra proceeds but the possessory rights must have an additional value. To sustain the dispossessed *alab* and *dri jermal* wherever they may relocate, an equitable share must be given to them. The division found by the trial court meets that requirement. Affirmed.

TONY I. EDWARDS, Defendant-Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee

Criminal Appeal No. 58

Appellate Division of the High Court

Marshall Islands District

February 7, 1977

Appeal following conviction of embezzlement and misconduct in public office. The Appellate Division of the High Court, per curiam, affirmed.

1. Criminal Law—Appeals—Scope of Review

In criminal appeals in which it is claimed the evidence was inadequate to support finding of guilty, paramount interest of Appellate Division of High Court is to assure that all efforts are made to consider any basis upon which appellant may have a valid claim for reversal, even when counsel has come dangerously close to abandoning his client.